

IN THE MATTER OF	:	BEFORE THE
THE DEPARTMENT OF PLANNING AND ZONING	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	Request for Clarification BA Case No. 87-42E
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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on December 13, 2007, to hear the petition of the Howard County Department of Planning and Zoning ("DPZ"), filed pursuant to Section 131.M. of the Howard County Zoning Regulations, seeking clarification of the Board's Decision and Order in BA Case No. 87-42E, dated March 9, 1989 (the "Decision and Order"), in which the Board granted a special exception for a private use-private ownership aircraft landing and storage area located on a 45-acre parcel (the "Property") in a rural zoning district.

DPZ is requesting clarification of approval Condition # 5, which states, "[t]hat no new structures for the storage or parking of aircraft be constructed on the subject property."

DPZ was represented at the hearing by Mr. Steve Rolls, Zoning Inspector for DPZ. Thomas Meachum, Esquire, represented Raymond Somerlock and Kevin Kinsey (property owners and special exception holders) at the hearing. Bruno Reich (a property owner and special exception holder) appeared on his own behalf. Robert L. Sharps, a vicinal property owner who had appeared in opposition to the original petition, appeared on his own behalf. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board. All of the members of the Board were present at the hearing and Chairperson Robert C. Sharps presided.

This case is a request for clarification and was conducted in accordance with Section 131.M. of the Howard County Zoning Regulations and 2.209 of the Board's Rules of Procedure. Notice of hearing was advertised, the property was posted, and each board member viewed the Property as required by the Zoning Regulations. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the General Plan for Howard County, the General Plan of Highways, the record and the Decision and Order in BA Case No. 87-42E, and the Request for Clarification submitted by DPZ were incorporated into the record by reference.

At the hearing, the Board limited the parties to oral arguments regarding the Request for Clarification.

BACKGROUND

In 1988, the Board of Appeals considered the petition of property owners for a special exception approval of a private use-private ownership aircraft landing and storage area located on a 45-acre parcel (the "Property") in a rural zoning district. The Property comprised eight adjoining and contiguous lots, each approximately 5.5 acres in size, on the east side of Sharp Road, also known as 3641, 3657, 3665, 3673, 3681, 3689 and 3697 Sharp Road, Glenwood. Five of the lots were improved with residences. Each lot shared a 150-foot wide, 3,200-foot airstrip easement along the tract's southern boundary. The Petitioners and opposition testimony focused primarily on noise and traffic control issues as well as compliance with the Zoning Regulations. The Board approved the special exception in BA Case no. 87-42E, concluding that the proposed use met the general standards for the approval of special exception uses and the specific requirements of Section 126.F.2. Private Use-Private Ownership of an Aircraft Landing and Storage Area subject to ten conditions. Condition # 5 restricted the storage of aircraft on the subject property as follows:

5. That no new structures for the storage or parking of aircraft be constructed on the subject property.

On or about October 11, 2006, DPZ received complaints alleging violations of the conditions of the special exception, including violations of Condition # 5. DPZ's inspection of the properties involved revealed two possible violations. DPZ's investigation revealed that in 2005, one of the eight property owners constructed an addition to his 1973 single-family dwelling on the property and stored an aircraft in that addition. DPZ also found that a single-family dwelling had been constructed on another lot in 1998 and that part of the basement level is used to store an aircraft.

DPZ next determined that there were no violations of the Regulations or Condition # 5. With respect to the 2005 addition, DPZ concluded that an addition to an existing structure does not constitute a "new structure." With respect to the 1998 dwelling, DPZ concluded that the primary use of the structure was as a single-family dwelling and that it therefore could not be considered "a new structure for the storage or parking of aircraft." When a complainant appealed these determinations, DPZ requested the Board to clarify Condition # 5, which states, "[t]hat no new structures for the storage or parking of aircraft be constructed on the subject property." The agency framed the issues within this context as follows:

1. Would an addition constructed and attached to a single-family dwelling on the Property and designed to park or store an aircraft be a "new structure for the storage or parking of aircraft"?
2. Would a single-family dwelling with an internal storage or parking area incorporated into the design be considered "a new structure for the storage or parking of aircraft"?

DISCUSSION

The issue presented to the Board by this request for clarification is whether DPZ's interpretation and application of the phrase "no new structures for the storage or parking of aircraft be constructed on the subject property" is in accord with the Board's intentions when it originally imposed Condition # 5.

Mr. Rolls proffered to the Board that DPZ applied the definition of a "principal use or structure" set forth in the Regulations to the alleged violations. The Regulations define a "principal use or structure" as "[t]he main use of a lot or the structure used for the main function of a lot, as opposed to an accessory use or structure. Structures which are attached to the principal structure, either directly or by a breezeway, shall be considered part of the principal structure." DPZ reasoned that the aircraft storage areas were new construction, however, they were attachments, not new principal structures for the storage of aircraft, the principal structures and uses being residential. Accordingly, DPZ found no violations of Condition # 5 because there were no new principal structures on the Property for aircraft storage or parking.

Thomas Meachum, Esquire, proffered that he concurred with DPZ's position and further stated that the Decision and Order did not prohibit the storage of an airplane on one's property within a garage attached to a single-family dwelling.

Bruno Reich proffered that the structures at issue violate Condition # 5 of the original Decision and Order. Mr. Reich also stated that the Decision and Order specifically mentioned that there would be no hangars on the site.

Robert L. Sharps proffered that his concern is with DPZ's interpretation of the Decision and Order.

Therefore, the issue before this Board is whether or not the Board approved BA 87-42E subject to the condition that the Petitioners not construct new *principal* structures for the storage or parking of aircraft. Upon consideration of the arguments proffered to this Board, the record of the special exception use request, and the Board of Appeals Decision and Order in Case No. BA 87-42E, this Board concludes that when the Board prohibited the construction of "new structures for the storage or parking of aircraft" in BA 87-42E, its intent was to prohibit the building of principal structures such as hangars which could be used to store or park aircraft on the subject property.

ORDER

Based upon the foregoing, it is this 31ST day of March, 2008, by the Howard County Board of Appeals, **ORDERED:**

That the Board's Decision and Order in BA Case No. 87-42E, dated March 9, 1989 is clarified consistent with the discussion and conclusion above.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS



Ann Nicholson


Albert J. Hayes, Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

Absent at Time of Signing
James Walsh, Vice-Chairperson


Maurice M. Simpkins


Barry Sanders
Assistant County Solicitor


Kevin Doyle

Did not participate
Michelle D. James*

* Michelle D. James was appointed to the Board of Appeals January 1, 2008, as a successor to Robert Sharps. Michelle D. James did not participate in the hearing and deliberation of this petition.